

Senate Bill No. 1090

Passed the Senate August 17, 2004

Secretary of the Senate

Passed the Assembly August 16, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 798.71 of the Civil Code, and to amend Sections 18024, 18060.5, 18062.2, and 18063 of, and to add Sections 18014.5 and 18061.6 to, the Health and Safety Code, relating to manufactured homes and mobilehomes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1090, Dunn. Manufactured homes and mobilehomes.

(1) Under the existing Mobilehome Residency Law, the management may not prohibit the listing nor the sale of a manufactured home or mobilehome within the park by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person other than the management, nor require the selling homeowner, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, to authorize the management to act as the agent in the sale of a manufactured home or mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park.

This bill would additionally provide that the management may not require the selling homeowner or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, to authorize any other specified broker, dealer, or person to act as the agent in the sale of a manufactured home or mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park. The bill would also make technical changes in those provisions.

(2) The existing Mobilehomes-Manufactured Housing Act of 1980 prescribes conduct that is an unlawful business practice with respect to the sale of manufactured homes and mobilehomes, makes it unlawful for a dealer or salesperson to engage in specified



conduct, and makes it a misdemeanor to engage in those practices or that conduct.

This bill would revise a provision that makes it an unlawful business practice to participate in the sale of a manufactured home, mobilehome, or commercial coach without making the return and payment of sales tax due.

The bill would additionally make it an unlawful business practice to fail or within 3 days after accepting the buyer's offer, but no less than 48 hours prior to the close of escrow or transfer of title, to execute a document or provision within an existing document signed by both the dealer and seller that discloses the exact amount of the buyer's offer and the specific amounts of any commission. The bill would require the dealer to submit a copy of that disclosure into escrow and maintain, at the dealer's place of business, a copy of that disclosure for 3 years from the date of sale. The bill would also require the escrow agent to ensure that the disclosure deposited into escrow is executed and complete. The bill would also require a net listing agreement, as defined, to contain specified disclosures.

The bill would make it unlawful for a dealer, or a salesperson who is also an owner or manager or an agent of the owner or manager of a mobilehome park, to knowingly violate specified provisions of the Mobilehome Residency Law relating to the sale or transfer of mobilehomes.

The bill would revise terminology in the provisions relating to conduct by a dealer in the sale or advertising of a manufactured home, mobilehome, or commercial coach generally from "commercial coach" to "commercial modular."

(3) Existing law prohibits advertising or representing a manufactured home, mobilehome, or commercial coach as new if it was a model unless that fact is advertised.

This bill would, alternatively, authorize that information to be provided by posting it and including a notice in a purchase agreement.

(4) Existing law requires the Department of Housing and Community Development to adopt specified regulations relative to issuance of citations.

This bill would, instead, authorize the department to adopt those regulations. The bill would specify the extent to which regulations



of the department to implement and interpret provisions of the bill are subject to the Administrative Procedure Act.

Because violations of various provisions of the bill would create new crimes, the bill would create a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 798.71 of the Civil Code is amended to read:

798.71. (a) (1) The management may not show or list for sale a manufactured home or mobilehome without first obtaining the owner's written authorization. The authorization shall specify the terms and conditions regarding the showing or listing.

(2) Management may require that a homeowner advise management in writing that his or her manufactured home or mobilehome is for sale. If management requires that a homeowner advise management in writing that his or her manufactured home or mobilehome is for sale, failure to comply with this requirement does not invalidate a transfer.

(b) The management shall prohibit neither the listing nor the sale of a manufactured home or mobilehome within the park by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a manufactured home or mobilehome in the mobilehome park through the death of the owner of the manufactured home or mobilehome who was a homeowner at the time of his or her death, or the agent of any such person other than the management.

(c) The management shall not require the selling homeowner, or an heir, joint tenant, or personal representative of the estate who gains ownership of a manufactured home or mobilehome in the mobilehome park through the death of the owner of the manufactured home or mobilehome who was a homeowner at the time of his or her death, to authorize the management or any other specified broker, dealer, or person to act as the agent in the sale of



a manufactured home or mobilehome as a condition of resale of the home in the park or of management's approval of the buyer or prospective homeowner for residency in the park.

(d) Nothing in this section shall be construed as affecting the provisions of the Health and Safety Code governing the licensing of manufactured home or mobilehome salespersons or dealers.

SEC. 2. Section 18014.5 is added to the Health and Safety Code, to read:

18014.5. For purposes of this part, a "net listing agreement" means any agreement entered into by a seller of a manufactured home or mobilehome that is not a new manufactured home or mobilehome and a licensed dealer in which the seller agrees to accept a specific purchase price and under which the dealer may receive as a commission all proceeds from the sale in excess of that purchase price.

SEC. 3. Section 18024 of the Health and Safety Code is amended to read:

18024. (a) If, upon inspection or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is acting in the capacity, or engaging in the business, of a dealer within this state without having a license in good standing therefor, and the person is not otherwise exempt pursuant to subdivision (b) of Section 18002.6, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order of abatement and assessment of a civil penalty not to exceed two thousand dollars (\$2,000). All civil penalties collected under this section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund provided for in Section 18016.5.

(b) The department may adopt regulations prescribing procedures for issuance of citations under this section and covering the assessment of a civil penalty which shall give due consideration to the gravity of the violation, the good faith of the person cited, and any history of previous violations.

(c) The sanctions authorized under this section shall be separate from, and in addition to, all other civil or criminal remedies.

SEC. 4. Section 18060.5 of the Health and Safety Code is amended to read:

18060.5. With respect to business practices, it is unlawful to do any of the following:



(a) Knowingly purchase, sell, or otherwise acquire or dispose of a stolen manufactured home, mobilehome, or commercial modular.

(b) Violate any of the terms or provisions of regulations promulgated under the authority of Section 18015.

(c) Cause the state or any person to suffer any loss or damage by reason of any fraud or deceit practiced on them or fraudulent representations made to any person in the sale or purchase of a manufactured home, mobilehome, or commercial modular or parts or accessories thereof.

(d) Violate any of the terms and conditions of Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code.

(e) Move a manufactured home, mobilehome, or commercial modular subject to registration pursuant to this part from a mobilehome park or other site of installation to another location, without obtaining from the legal owner, written consent for the move as prescribed in Section 18099.5.

(f) Include as an added cost to the selling price of a manufactured home, mobilehome, or commercial modular, an amount for licensing or transfer of title of the manufactured home, mobilehome, or commercial modular, which amount is not due to the state unless, prior to the sale, the amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of those fees. However, a dealer may collect from the second purchaser of a manufactured home, mobilehome, or commercial modular, a prorated fee based upon the number of months remaining in the registration year for that manufactured home, mobilehome, or commercial modular, if the manufactured home, mobilehome, or commercial modular was previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this part and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the manufactured home, mobilehome, or commercial modular.

(g) Participate in the sale of a manufactured home, mobilehome, or commercial modular reported to the department pursuant to this part without making the return and payment of any



sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(h) Fail to exercise reasonable supervision over the activities of employees who negotiate or promote the sale of manufactured homes, mobilehomes, or commercial modulars.

(i) Display for sale, offer for sale, or sell, a manufactured home, mobilehome, or commercial modular, representing that manufactured home, mobilehome, or commercial modular to be of a year model different from the year model designated at the time of manufacture or first assembly as a completed manufactured home, mobilehome, or commercial modular.

(j) Directly or indirectly authorize or advise another licensee to change the year model of a manufactured home, mobilehome, or commercial modular in the inventory of the other licensee.

(k) Fail, at the time that the seller enters into a net listing agreement, to disclose in writing as part of the listing agreement in 12-point boldface type all of the following:

(1) That a buyer's offer may be in excess of the amount that the seller has agreed to accept as a purchase price in the listing agreement.

(2) That the dealer may retain any amount in excess of the amount the seller has agreed to as the purchase price in the listing agreement as the dealer's compensation or commission.

(3) That additional costs or payments involved in the sales transaction may be deducted or made from the amount the seller has agreed to accept as the purchase price in the listing agreement by the close of escrow.

(l) Fail, within three days after the date a buyer's written offer to purchase a mobilehome or manufactured home that is not a new mobilehome or manufactured home is accepted, but no less than 48 hours prior to the close of escrow or transfer of title to the mobilehome or manufactured home from the seller to the buyer, to disclose to the seller in a document, signed or initialed by the seller and the dealer, that is an addendum to the disclosure required in subdivision (k), the exact amount of the buyer's offer and the specific amounts of any commission. The dealer shall submit a copy of the disclosure required by subdivision (k) and this subdivision into escrow and maintain, at the dealer's place of business, a copy of that disclosure for three years from the date of sale. The escrow agent shall ensure that the disclosure deposited



into escrow is executed and complete. However, nothing in this subdivision shall be construed to require the escrow agent to be responsible for determining the accuracy of any of the statements in that disclosure.

SEC. 5. Section 18061.6 is added to the Health and Safety Code to read:

18061.6. (a) Notwithstanding the prohibition in subdivision (d) of Section 18061 or any regulation to the contrary, a dealer may, alternatively, post in a prominent location immediately outside the primary entrance to a new manufactured home, mobilehome, or commercial modular a conspicuous notice that the unit was previously installed as a model, display unit, or used for other occupancy. Additionally, a similarly conspicuous and prominent notice, requiring a buyer's separate initials, shall be included in any purchase agreement for that unit.

(b) Notwithstanding Section 5050 of Title 25 of the California Code of Regulations, an advertisement of any new manufactured home, mobilehome, or commercial modular is not required to contain the year of manufacture of the unit provided the new unit is not more than three years old.

(c) Notwithstanding Section 5050 of Title 25 of the California Code of Regulations, an advertisement of any manufactured home, mobilehome, or commercial modular is not required to contain the model name of any unit if the model name is disclosed in a conspicuous and prominent notice, requiring the buyer's separate initials, in any purchase agreement for that unit.

SEC. 6. Section 18062.2 of the Health and Safety Code is amended to read:

18062.2. It is also unlawful for a dealer to do any of the following:

(a) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business.

(b) Employ any person as a salesperson who is not licensed pursuant to this part, or whose license or 90-day certificate is not displayed on the premises of the dealer as provided in Section 18063.

(c) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of manufactured homes, mobilehomes, or commercial modulars, or to permit the use of the dealer's license,



supplies, or books to operate a secondary location to be used by any other person, if the licensee has no financial or equitable interest or investment in the manufactured homes, mobilehomes, or commercial modulars sold by, or the business of, or secondary location used by, the person, or has no such interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the dealer's license, supplies, or books to engage in the sale of manufactured homes, mobilehomes, or commercial modulars.

(d) Advertise any specific manufactured home, mobilehome, or commercial modular for sale without identifying the manufactured home, mobilehome, or commercial modular by its serial number or by the number on its federal label or insignia of approval issued by the department.

(e) Advertise the total price of a manufactured home, mobilehome, or commercial modular without including all costs to the purchaser at the time of delivery at the dealer's premises, except sales tax, title and registration fees, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty dollars (\$20).

(f) Exclude from the advertisement of a manufactured home, mobilehome, or commercial modular for sale information to the effect that there will be added to the advertised total price at the time of sale, charges for sales tax, title and registration fees, escrow fees, and any dealer documentary preparation charge.

(g) Represent the dealer documentary preparation charge as a governmental fee.

(h) Refuse to sell the manufactured home, mobilehome, or commercial modular to any person at the advertised total price for that manufactured home, mobilehome, or commercial modular, exclusive of sales tax, title fee, finance charges, and dealer documentary preparation charge, which charge shall not exceed twenty dollars (\$20), while it remains unsold, unless the advertisement states the advertised total price is good only for a specified time and that time has elapsed.

(i) Not post the salesperson's license in a place conspicuous to the public on the premises where they are actually engaged in the selling of manufactured homes, mobilehomes, and commercial modulars for the employing dealer. The license shall be displayed



continuously during their employment. If a salesperson's employment is terminated, the dealer shall return the license to the salesperson.

(j) Offer for sale, rent, or lease within this state a new manufactured home, mobilehome, or commercial modular whose manufacturer is not licensed under this part.

(k) To violate Section 798.71 or 798.74 of the Civil Code, or both.

(l) When the dealer is an owner or manager, or an agent of the owner or manager, of a mobilehome park and serves as the dealer for a manufactured home or mobilehome to be installed or sold in the park, to knowingly violate Section 798.72, 798.73, 798.73.5, 798.75.5, or 798.83 of the Civil Code.

SEC. 7. Section 18063 of the Health and Safety Code is amended to read:

18063. It is unlawful for a salesperson to do any of the following:

(a) At the time of employment, not deliver to his or her employing dealer his or her salesperson's license or 90-day certificate.

(b) Fail to report in writing to the department every change of residence within five days of the change.

(c) Act or attempt to act as a salesperson while not employed by a dealer. For purposes of this subdivision, "employment by a dealer" means employment reported to the department pursuant to subdivision (c) of Section 18060.

(d) To violate Section 798.71 or 798.74 of the Civil Code, or both.

(e) When the salesperson is an owner or manager, or an agent of the owner or manager, of a mobilehome park and serves as the salesperson for a manufactured home or mobilehome to be installed or sold in the park, to knowingly violate Section 798.72, 798.73, 798.73.5, 798.75.5, or 798.83 of the Civil Code.

SEC. 8. Any regulations adopted by the Department of Housing and Community Development in Title 25 of the California Code of Regulations to implement and interpret the amendments in Sections 2 to 6, inclusive, of this act shall be deemed to not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element as provided in Section 100 of Title 1 of the California Code of



Regulations if the regulations consist of amendments, repeals, or adoptions that are substantially the same in content as the provisions of Sections 2 to 6, inclusive, of this act.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2004

Governor

